IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6424 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHALAL RAMJIBHAI PATEL

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:

M/S THAKKAR ASSOC. for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Articles 14, 19(1)(g), 21, and 226 of the

Constitution of India challenging the order of detention passed by the learned District Magistrate, Rajkot on 14.5.2000 detaining the petitioner under the provisions of Section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980.

2. The petitioner has challenged the aforesaid order of detention of several grounds enumerated in the petition. On submissions of the petitioner, rule was issued and served upon the respondents. Mr. S.K.Patel, learned APP appears on behalf of respondent nos. 1, 2 and 3 with respect to the rule served upon them. Ms. P.J.Davawala learned Additional Sr. Standing Counsel appears for respondent no.4. I have heard the learned advocate for the petitioner as well as Mr. Patel learned APP for respondent nos. 1, 2 and 3 and Ms. Dawavala, learned Additional Sr. Standing Counsel for respondent no.4. I have perused the papers shown to me during the course of arguments by the learned advocates for the parties.

3. On behalf of the petitioner it has been contended that the petitioner had submitted representation against his detention on 15.6.2000 at page -31 of the petition and in para.6 of the said representation at page -33 the petitioner has stated that the detaining authority has referred to and relied upon the Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981. However, the copy of the said Controller Order, 1981 is not supplied to the petitioner along with the grounds of detention and, therefore, the detenu cannot make effective representation. Non-supply of important and vital documents, has denied the detenu his right of making effective representation under Article 22(5) of the Constitution of India. That the documents may therefore kindly be supplied to the petitioner and in absence, of the said vital and important documents, detenu's detention is required to be revoked forthwith. Thereby, the petitioner positively demanded the copy of the aforesaid Control Order, 1981. That at the first instance, Mr. Patel, learned APP has submitted that it is not clear as to whether the said representation was received by the District Magistrate, Rajkot or not. The learned advocate for the petitioner has shown the postal acknowledgment showing that the said representation had reached to the office of the District Magistrate, Rajkot.

4. Thereby, it is clear that the petitioner has positively demanded for supply of the copy of the said Control Order 1981. Admittedly, the same has not been supplied to the petitioner. The respondents have not

filed any affidavit showing that the copy of the Control Order, 1981 was supplied to the petitioner. There is no oral arguments also that the copy of Control Order, 1981 has been supplied to the petitioner. This would clearly mean that the respondent have relied upon the said Control Order, 1981 for the purpose of detention order and despite the demand of the petitioner for supplying the copy of the Control Order, 1981 the same has not been supplied to the petitioner which shows that the petitioner is deprived his valuable right of making effective representation against his detention.

5. To submit the representation against his detention is a statutory right of detenu and when the petitioner is deprived of his statutory right of not supplying the said documents, it would be held that the detention cannot sustained when the documents relied upon by the detaining authority are not supplied to the petitioner despite his demand.

6. In aforesaid view of the matter, order of detention cannot sustain and the same is required to be quashed and set aside.

7. In aforesaid view of the matter, the present petition is allowed and order of detention passed by the District Magistrate, Rajkot on 14.5.2000 is ordered to be quashed and set aside. The petitioner shall be set at liberty forthwith, if no longer required in any other case. Rule made absolute.

(D.P.Buch,J)

(vipul)